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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 CHARLES HAYES,) Case No.: 1:20-cv-01820-NONE-JLT
12 Plaintiff,)
13 v.) FINDINGS AND RECOMMENDATION TO
14 DEPUTY MARIO ROJAS, et al.,) DISMISS THE ACTION FOR CLAIM SPLITTING
15 Defendants.) [TWENTY-ONE DAY OBJECTION DEADLINE]
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21)

22 On December 30, 2020, the Court issued an order to show cause as to why the action should
23 not be dismissed for claim splitting. (Doc. 8.) The plaintiff filed a response to the order to show cause
24 on January 12, 2021. (Doc. 9.) For the following reasons, the Court recommends that the action be
25 dismissed.
26

27 **BACKGROUND**

28 On December 6, 2019, Plaintiff Charles Hayes filed a complaint against Kern County and Does
1 through 10. (Doc. 1, Hayes v. Kern County, Case No. 1:19-cv-01722-JLT) (“Hayes I”). Hayes I
brought four claims related to plaintiff allegedly being improperly held in custody based on an
erroneous identification after his arrest in Las Vegas and transfer to Kern County: (1) false arrest and
false imprisonment; (2) *Monell* claim; (3) negligence; and (4) intentional infliction of emotional
distress. (Id.)

The plaintiff filed a related case: Hayes v. Rojas, et al., Case No. 1:20-cv-01820-NONE-JLT

(“Hayes II”). In Hayes II, the plaintiff names Deputy Mario Rojas, Jocelyn Marie, Connie Jefferies, Deputy Rhonda Powell Boyles, Deputy Patrick Gilbert Klawitter, Deputy Christopher Banks, and Sherriff Support Technician Brandy Hirrel. (Doc. 1.) Hayes II is based on the same allegations of being improperly held in custody based on an erroneous identification and includes the following claims: (1) false arrest and false imprisonment; (2) negligence; and (3) intentional infliction of emotional distress. (*Id.*)

In Hayes I, plaintiff filed a motion to amend the complaint to include the defendants named in Hayes II. (Doc. 18, Case No. 1:19-cv-01722-JLT.) The Court found that plaintiff had not been diligent in seeking leave to amend, had not met the good cause requirement of Rule 16 and denied the motion to amend on December 21, 2020. (Doc. 23.) The Court noted in that order that “Plaintiff clearly could have filed a new lawsuit, but ignores that it would be subject to dismissal due to his failure to amend in this case, constituting impermissible claim splitting.” (*Hayes v. Kern County*, Case No. 1:19-cv-01722-JLT, citing *Adams v. Cal. Dep’t of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880, 904 (2008).) Just one week later, on December 28, 2020, plaintiff filed Hayes II. (Doc. 1, Case No. 1:20-cv-01820-NONE-JLT.)

DISCUSSION

The complaint in Hayes II raises the question of whether the Hayes II action represents impermissible claim splitting. The prohibition against claim splitting bars subsequent litigation involving the same subject matter, *Single Chip Systems Corp. v. Intermec IP Corp.*, 495 F. Supp. 2d 1052, 1058 (S.D. Cal. 2007), and is designed “to protect the defendant from being harassed by repetitive actions based on the same claim.” *Clements v. Airport Auth. of Washoe County*, 69 F.3d 321, 328 (9th Cir. 1995). In assessing whether a suit is duplicative, Ninth Circuit case law looks to the causes of action asserted, the relief sought, and the parties to the action. *See Adams*, 487 F.3d at 689. A suit is deemed duplicative if the claims, parties, and available relief do not vary significantly between the two actions. *Id.*

The Ninth Circuit applies a “transaction” test to determine whether the causes of action in successive suits are identical. *Adams*, 487 F.3d at 690. Four criteria are weighed in the transaction test:

- (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same

evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.

Costantini v. Trans World Airlines, 681 F.2d 1199, 1201-02 (9th Cir. 1982). The last criteria, “whether the two suits arise out of the same transactional nucleus of facts,” is the most important. Id. at 1202.

Applying the transaction test in Adams to determine whether the claims are closely related, all four factors are met. Beginning with the fourth and most important factor, the two suits indisputably arise from the same transactional nucleus of facts. The complaints in each action allege that plaintiff was allegedly being improperly held in custody based on an erroneous identification after his arrest in Las Vegas and transfer to Kern County. Because the two actions arise from the same transaction nucleus of facts, substantially the same evidence would be presented in each action, thereby satisfying the second factor. In both actions, plaintiff would have to present evidence that he was held in custody based on an erroneous identification.

As to the first factor, Plaintiff is attempting to avoid the consequences of his failure to comply with the scheduling order and to avoid the Court’s order denying him leave to amend in Hayes I. Because rights or interests established in Hayes I would be destroyed or impaired by prosecution of Hayes II, allowing Hayes II to proceed, would render the Court’s order meaningless. Thus, the first factor is met.

The third factor is also met. Plaintiff asserts incorrectly, that in Hayes I he raises only a Monell claim against the County. (Id.) To the contrary, in addition to the Monell claims brought in Hayes I, Plaintiff asserts a claim for negligence and for intentional infliction of emotional distress against the County. (Doc. 11, Case No. 1:19-cv-01722-JLT.) The County may be held vicariously liable for the negligence of its employees. (Cal. Gov. Code § 815.2)

The second factor is met too. Because the actions raise duplicate claims, in both cases Plaintiff will be required to prove the employees acted negligently in falsely arresting and imprisoning him and in doing so, intentionally inflicted emotional distress upon him. In Hayes I, this showing is necessary to impose vicarious liability on the County. In Hayes II, this is necessary to impose liability on the individuals. Likewise, in both cases, Plaintiff must prove that he suffered a violation of the Fourth Amendment. In Hayes I, this is needed for the *Monell* claims because he is required to prove that an

1 unconstitutional policy or custom caused his damages. In Hayes II, it is necessary to prove the § 1983
2 claims. Thus, undoubtedly, the duplicated claims raised in both cases will require presentation of the
3 substantially the same evidence in both cases.

4 Under the doctrine of claim splitting, a party is “not at liberty to split up his demand, and
5 prosecute it by piecemeal, or present only a portion of the grounds upon which special relief is sought,
6 and leave the rest to be presented in a second suit, if the first fail.” Cook v. C.R. England, 2012 WL
7 2373258, at *3 (C.D. Cal. June 21, 2012) (quoting United States v. Haytian Republic, 154 U.S. 118,
8 125 (1894)). The ultimate objective of the doctrine is to “protect the Defendant from being harassed
9 by repetitive actions based on the same claim” and “to promote judicial economy and
10 convenience.” Id. (citing Clements, 69 F.3d at 328).

11 Moreover, even though the County of Kern is not a named defendant in Hayes II, it is
12 obligated to defend and indemnify the individual defendant-employees. Cal. Gov. Code § 995. Thus,
13 the real party in interest in Hayes II is the County of Kern. Therefore, the instant Hayes II action
14 duplicates Hayes I and should be dismissed as impermissible claim splitting and an end-run around
15 this Court’s denial of leave to amend.

16 **RECOMMENDATION**

17 Based upon the foregoing, the court RECOMMENDS that this action be dismissed.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
20 Rules of Practice for the United States District Court, Eastern District of California. Within twenty-
21 one days after being served with these findings and recommendations, plaintiff may file written
22 objections with the court. Such a document should be captioned “Objections to Magistrate Judge’s
23 Findings and Recommendations.”

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1 Plaintiff is advised that failure to file objections within the specified time may waive the right
2 to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991); Wilkerson v.
3 Wheeler, 772 F.3d 834, 834 (9th Cir. 2014).

4
5 IT IS SO ORDERED.

6 Dated: February 4, 2021

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE